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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1983

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GROVE CITY COLLEGE, INDIVIDUALLY AND ON BEHALF OF ITS STUDENTS, *et al.*,
*Petitioners,*

v.

TERREL H. BELL, SECRETARY OF EDUCATION, *et al.*
*Respondents.*

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**On Writ of Certiorari to the United States Court of Appeals for the Third Circuit**

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## BRIEF AMICI CURIAE IN SUPPORT OF RESPONDENTS OF AMERICAN ASSOCIATION OF UNIVERSITY WOMEN; AMERICAN CIVIL LIBERTIES UNION; AMERICAN COALITION FOR CITIZENS WITH DISABILITIES, INC.; CENTER FOR NATIONAL POLICY REVIEW; CHILDREN'S DEFENSE FUND; DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, INC.; EMPLOYMENT LAW CENTER; LEAGUE OF WOMEN VOTERS OF THE UNITED STATES; MEXICAN AMERICAN WOMEN'S NATIONAL ASSOCIATION;

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NATIONAL ASSOCIATION OF THE DEAF; NATIONAL COALITION OF INDEPENDENT COLLEGE AND UNIVERSITY STUDENTS; NATIONAL EDUCATION ASSOCIATION; NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC.; NATIONAL STUDENT EDUCATIONAL FUND; NATIONAL WOMEN'S POLITICAL CAUCUS; NOW LEGAL DEFENSE AND EDUCATION FUND; NEW YORK CITY COMMISSION ON THE STATUS OF WOMEN; UNITED STATES STUDENT ASSOCIATION; WOMEN EMPLOYED; WOMEN'S EQUITY ACTION LEAGUE; AND WOMEN'S LEGAL DEFENSE FUND

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*Respondents.*

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**On Writ of Certiorari to the United States Court of Appeals for the Third Circuit**

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## BRIEF AMICI CURIAE IN SUPPORT OF RESPONDENTS OF AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, *et al.*

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### INTEREST OF *AMICI CURIAE*

American Association of University Women; American Civil Liberties Union; American Coalition for Citizens with Disabilities, Inc.; Center for National Policy Review; Children's Defense Fund; Disability Rights Education and Defense Fund, Inc.; Employment Law Center; League of Women Voters of the United States; Mexican American Women's National Association; National Association of the Deaf; National Coalition of Independent College and University Students; National Education Association; National Federation of Business and Professional Women's Clubs, Inc.; National Student Educational Fund; National Women's Political Caucus; NOW Legal Defense and Education Fund; New York City Commission on the Status of Women; United States Student Association; Women Employed; Women's Equity Action League; and Women's Legal Defense Fund submit

this brief as *amici curiae* in support of the Respondent, filed upon the written consent of the parties in accordance with Rule 36.2 of the Rules of this Court.[1]

*Amici curiae* are a broad and diverse set of organizations working to end sex, race, national origin, and disability discrimination in educational institutions. This case arises under Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1686 ("Title IX") which prohibits sex discrimination in any education program or activity receiving federal financial assistance. 20 U.S.C. § 1681(a).

In this litigation, Grove City College advances an extremely limited view of the scope and coverage of Title IX, by defining the term "program or activity receiving [f]ederal financial assistance" in a most narrow fashion. Were Grove City's position to be adopted, many schools would be exempt from Title IX coverage in their entirety, and whole segments of other elementary and secondary schools and higher education institutions would also not be covered. The definition has comparable important consequences for the federal laws prohibiting discrimination on the basis of race and national origin (Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d ("Title VI")), and disability, (Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504")). *See also* the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101-07. In this brief, *amici* will address the specific arguments raised by Grove City College concerning the definition of "program or activity receiving federal financial assistance" under Title IX.

## SUMMARY OF ARGUMENT

Although Grove City College receives federal funds through a substantial number of its students' tuition and fees payments which are financed by federal funds, the College claims that it does not receive federal financial

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[1] Written consents from counsel for the Petitioners and for the Respondent have been filed with the Clerk of the Court.

assistance within the meaning of Title IX.[2] Grove City argues first that federal student assistance does not constitute assistance to the College itself; and second, that because the student assistance flows throughout the College and is not earmarked for a particular program or activity within the College, none of these programs is covered.

Both of Grove City's arguments are incorrect. The plain language of the statute, the legislative history of Title IX and Title VI, upon which Title IX was based, as well as the case law on point, make clear that a school is covered when its students receive federal financial aid. The aid clearly goes to the school in the form of payment of tuition and other charges. Congress has consistently viewed these funds as aid to the school as well as to the students.

Moreover, the fact that the federal monies flow throughout the College once received does not, despite Grove City's arguments to the contrary, immunize the College from its obligations to comply with Title IX. The legislative history of Title VI and Title IX and relevant case law confirm that although Title IX only covers those programs and activities receiving federal financial assistance, in this case, given the nature of the federal funds at issue which enter the College's general fund and flow throughout the school, all of its component programs and

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[2] Grove City students receive Basic Educational Opportunity Grants ("BEOGs"), 20 U.S.C. § 1070a, and Guaranteed Student Loans ("GSLs"), 20 U.S.C. § 1071. The BEOG program provides education grants on the basis of income and need standards. The assessment of need includes the actual tuition and fees charged by the school. The GSL program provides both loan guarantees and grants to pay a portion of the interest on the loans for students attending "eligible institutions." 20 U.S.C. § 1071(a). Despite the large portion of the GSL program comprised of grants rather than loan guarantees, the Department failed to appeal the District Court's ruling that the GSL program falls within the statutory exception for loan guarantees. *Grove City College v. Bell*, 687 F.2d 684, 690 n. 10 (3d Cir. 1982).

activities are receiving and benefiting from federal funds and therefore are covered.

## ARGUMENT

The Court of Appeals determined, first, that Grove City College is a recipient of federal financial assistance and therefore covered by Title IX; and second, that because of the type of financial assistance Grove City receives—student financial aid which flows throughout and benefits the entire school—all of the College's particular programs and activities are covered by Title IX.[3]

Following the analysis employed by this Court in determining whether Title IX reaches employees as well as students in *North Haven Board of Education v. Bell*, 456 U.S. 512 (1982), a full reading of both the legislative history and case law demonstrates that the Court of Appeals correctly determined that the federal financial assistance received by Grove City subjects the entire College to Title IX.

### I. THE EXPRESS LANGUAGE OF TITLE IX AND ITS LEGISLATIVE HISTORY ESTABLISH THAT FEDERAL FINANCIAL ASSISTANCE TO STUDENTS AT GROVE CITY COLLEGE SUBJECTS THE COLLEGE IN ITS ENTIRETY TO TITLE IX.

#### A. The Express Language of Title IX.

As this Court stated in *North Haven Board of Education v. Bell*, *supra*, the "starting point in determining the scope of Title IX is, of course, the statutory language." 456 U.S. at 520. Section 901(a) of Title IX contains the "broad directive" *id.*, that

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[3] Title IX regulations provide:

> (h) "Recipient" means . . . any person to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

34 C.F.R. § 106.2(h).

> [n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . .

20 U.S.C. § 1681(a).

There is nothing in the language of Section 901(a) which suggests that programs or activities must receive federal financial assistance directly. There is nothing which suggests that funds will not be considered received if they flow to the program or activity through another person or entity, such as students. There is nothing in this language which suggests that programs or activities will not be considered to have received funds unless the funds are specifically designated by the government for those programs' use. Therefore, the plain language of Section 901(a) does not support Grove City's contention either that federal student aid is not received by the school because it flows to the school through the student, or because it is not designated for particular programs or activities in the school itself, but rather may be used by any part of the school once received.[4]

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[4] It is unclear whether Grove City concedes that if the financial aid were provided to the College to distribute to students, Grove City would be a recipient of federal financial assistance (Brief at 21 n. 19), but given the fact that throughout its brief Grove City appears to take the position that student financial aid *per se* is not federal financial assistance, *amici* assume that resolution of the question whether Grove City is a recipient does not turn on whether the College chooses to distribute the federal funds to its students under the Regular Disbursement System, *see* 34 C.F.R. §§ 690.71-690.85, or provide forms to its students so they may apply for federal funds themselves under the Alternative Disbursement System, *see* 34 C.F.R. §§ 690.91-690.96. As will be seen, Congress clearly did not distinguish between the manner in which funds may be administratively disbursed for purposes of Title IX coverage, and, indeed, it would be anomalous to permit schools to discriminate because they choose one means of administration of federal funding over another but nonetheless continue to receive the funding.

Moreover, the use by Congress in Section 901 of the terms "program or activity" rather than "recipient," "political entity" or "institution" elsewhere in Title IX, does not convey that only programs or activities that directly receive federal financial assistance are covered. A political entity, for example, may have particular programs and activities which receive federal funds directly or indirectly while other parts have no connection to or benefit from the federal funds at all. The fact that there may be circumstances where not all of an entity consists of programs or activities receiving federal funds does not mean that direct receipt must be required for the parts that do.

In short, the statutory language of Title IX contains no restrictions on the term "receipt," nor in any way suggests a restriction to the direct receipt of such assistance. Applying the principle that " 'if we are to give [Title IX] the scope that its origins dictate, we must accord it a sweep as broad as its language' [citations omitted]," this Court in *North Haven* found nothing in the statutory language to suggest that Congress intended to exclude employees from the statute's protection. *See* 456 U.S. at 521. Similarly, nothing in the declaration of rights in Section 901(a) or elsewhere in Title IX, suggests that Congress intended to limit the meaning of receipt of federal financial assistance to only certain types of receipt.

**B. The Legislative History.**

The legislative history of Title IX confirms that Congress fully intended to include financial aid to students as federal financial assistance that would bring a school in its entirety within the scope of Title IX.

**1. *Receiving Federal Financial Assistance.***

The contemporaneous legislative history of the Educational Amendments of 1972, of which Title IX was a part, establishes that the entire thrust of the legislation was to create a unified approach to federal assistance to

education, including federal financial aid to students, and to establish that such federal financial assistance would trigger a new prohibition on sex discrimination in educational programs and activities.

Title IX was originally introduced by Senator Bayh in August, 1971, as an amendment to S. 659, 92d Cong., 1st Sess. (1971), the Education Amendments of 1971. *See* 117 Cong. Rec. 30155 (1971). In addition to continuing existing programs of student financial assistance, the Amendments established the Basic Educational Opportunity Grant program, the source of federal funds at issue here. Senator Pell, the sponsor of the legislation, clearly viewed this program as federal financial assistance to schools, in describing his bill as

> the first attempt to treat the subject of Federal support to higher education as a unified whole. . . . Student assistance is coupled with institutional aid; specialized study areas are treated as one. Unity has been achieved so that the total commitment of the Federal Government to higher education can be fully realized and understood—understood as to the philosophy motivating the Congress to choose this approach rather than others.

*Id.* at 2007-8.[8]

Senator Bayh proposed to amend this "most far-reaching program of Federal aid to higher education," *id.* at 30403 (remarks of Sen. Bayh), to ban sex discrimination in education carried out with this federal aid. From the outset he linked the new student financial assistance in the bill and the amendment that was the

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[8] This aid is still seen as a critical source of assistance to colleges and universities. *Appropriations for 1982: Hearings Before the Subcomm. on the Departments of Labor, Health and Human Services, Education, and Related Agencies of the House Comm. on Appropriations*, 97th Cong., 1st Sess., Part 9, 602, 610-611 (1981) (testimony of David Knapp and John Frazer on behalf of 11 associations of colleges and universities) ("Knapp Testimony").

precursor of Title IX. *Id.*[6] Later, in a colloquy with Senator Dominick on the kinds of aid that might be terminated under the amendment, Senator Bayh made clear that he viewed it as reaching "all aid that comes through the Department of Health, Education, and Welfare," and stated that he doubted "whether even one institution of higher education [today], private or public, is not receiving some Federal assistance." *Id.* at 30408. Moreover, contrary to Grove City's assertion (Brief at 24-25), Senator Bayh's statement during this colloquy that termination of funding "would not be directed at specific assistance that was being received by individual students, but would be directed at the institution," *id.*, does not suggest that student aid was excluded from the federal financial assistance covered by Title IX. Rather, Senator Bayh acknowledged that the termination of such aid would be a "possib[le] . . . sanction," *id.*, but expressed his hope that the Secretary would use "good judgment" in employing that sanction and "would use only such leverage as was necessary against the institution." *Id.*[7]

Because Senator Bayh's amendment was ruled nongermane, *id.* at 30413-15, it was not until the following year that the Senate passed the amendment that was to become Title IX. In the interim, the House version of the education amendments, the Higher Education Act of 1971, H.R. 7248, 92d Cong., 1st Sess. (1971), was passed with a provision prohibiting sex discrimination in educa-

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[6] Similarly, Senator McGovern, speaking in support of Senator Bayh's amendment, described it as assuring that "no funds from [the Pell bill] . . . be extended to any institution which practices biased admissions or educational policies." *Id.* at 30158-59.

[7] Senator Dominick stated that "many private institutions . . . receive at least 50 percent of their operating costs from the Federal Government . . . [s]o that although we claim they are private, they are in fact receiving an enormous amount of help through one agency of Government or another, mostly through the HEW program." *Id.* at 30408. After this colloquy with Senator Bayh, he stated that he did not intend to object to the amendment. *Id.*

tion programs and activities receiving federal financial assistance. *See* 117 Cong. Rec. 39353-54 (1971).

The House bill to which this provision was attached, like its Senate counterpart, included student financial aid in the form of educational opportunity grants. *See* H.R. Rep. No. 554, 92nd Cong., 1st Sess. (1971), *reprinted in* 1972 U.S. Code Cong. & Ad. News 2462, 2464-65.[8] Moreover, House members in voting on the bill were well aware that the assistance contained in the bill constituted federal financial assistance under the nondiscrimination provision because opponents of the latter provision argued that to withdraw such assistance because of discrimination would be to work at cross-purposes with the intent of the overall bill. *See* 117 Cong. Rec. 39249 (1971) (remarks of Rep. Erlenborn).

When the Senate reconsidered the higher education bill in the following year, Senator Bayh reintroduced his nondiscrimination amendment. *See* Amendment No. 874 to S. 659, 92d Cong., 2d Sess., 118 Cong. Rec. 5803 (1972). The debate again makes clear that student financial aid would bring an institution with the scope of Title IX.[9]

Although Grove City makes much of the differences between the language of Senator Bayh's 1971 amendment

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[8] Indeed, in Supplemental Views some members of the committee observed that "Federal dollars now constitute over 20% of the total budget of our higher education system. Most of these dollars flow to *institutions through* research contracts, *student assistance programs*, and categorical programs. . . ." *Id.* at 2584 (emphasis added).

[9] For example, Senator Bentsen, in introducing an amendment to except from Title IX the admissions practices of public, traditionally single-sex institutions, referred to federal student assistance used to pay tuition and fees. He stated:

> If [f]ederal funds are cut off, it is the students who will suffer. [Texas Women's University] now receives over $250,000 in education opportunity grants; it receives $83,000 for college work-study programs.

118 Cong. Rec. 5814 (1972). *See also* 117 Cong. Rec. 30408 (1971) (remarks of Sen. Bayh).

and his 1972 amendment, both versions were amendments to the same higher education bill that included student financial aid as federal financial assistance to an institution. After Title IX passed the House, in 1972 Senator Bayh simply substituted the language of the House-passed version for his earlier language without reference to the change in language. He explained the 1972 version as a "comprehensive approach which incorporates . . . the key provisions of my earlier amendment. . . ." 118 Cong. Rec. 5808 (1972).

The legislative history also rebuts Grove City's assertion that Congress viewed student aid as separate and distinct from institutional aid.[10] In fact the legislation was to treat the two forms of aid as part and parcel of one package.[11]

Events subsequent to the passage of Title IX also confirm the inclusion of student financial aid under Title IX. In 1974, after HEW had issued proposed regulations under Title IX including student financial aid as federal

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[10] Grove City relies in part, for this argument, on the hearings in the House report under which the kinds of aid fell—with "student assistance" under one heading and "institutional aid" under another. (Brief at 27.) As this Court made clear in *North Haven*, however, when the content of the material within the hearings negates the distinction attempted to be drawn from the language of the headings, no particular significance should be attached to the headings. *See* 456 U.S. at 525.

[11] A controversy between the House-passed and Senate-passed version confirms the unified nature of the act. In the House version, the amount of institutional aid a school received was tied simply to the number of students in attendance. *See* H.R. Rep. No. 798, 92d Cong., 2d Sess. (1972), *reprinted in* 1972 U.S. Code Cong. & Ad. News 2608, 2674. In the Senate version, however, the amount of institutional aid was based on the number of students receiving Basic Educational Opportunity Grants and other forms of financial aid. *Id.* at 2673. The Senate version prevailed and in fact was described by Rep. Boggs as a "program of direct, general assistance." 118 Cong. Rec. 20319 (1972). *See also id.* at 18437 (remarks of Sen. Pell) ("All but 10 percent of the institutional aid provisions are tied to the student assistance provisions.")

financial assistance, an amendment that would have limited the definition of federal financial assistance failed to win congressional approval.[12]

Six months later, the Department of Health, Education, and Welfare promulgated its regulations which expressly included student financial aid within federal financial assistance. *See* 40 Fed. Reg. 24128 (1975). The regulations were approved by the President and sent to Congress for review as provided by statute.[13] Several efforts were made to cut back on the broad reach of the regulations, including their definition of federal financial assistance. None succeeded.[14]

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[12] That amendment provided that payments authorized under Part A of the Medicare Program, 42 U.S.C. § 1395 *et seq.*, for persons who receive care in nursing homes or other similar facilities operated by a fraternal organization would not be deemed to be federal financial assistance for purposes of any other federal law. *See* 120 Cong. Rec. at 39993-94. According to the sponsor of the amendment, Senator Griffin, its purpose was to correct HEW's determination that such payments constitute federal financial assistance under Title VI. *Id.* at 39994. The amendment by its terms also would have affected Title IX. Like Grove City, Senator Griffin viewed the HEW determination as incorrect because "the medicare program was designed primarily to assist individuals not institutions or organizations." *Id.* Although the amendment passed the Senate, the House conferees refused to accept it, and its narrow interpretation of federal financial assistance. *See* S. Rep. No. 1409, 93d Cong., 2d Sess., *reprinted in* 1974 U.S. Code Cong. & Ad. News 6793, 6797.

[13] Pursuant to the General Education Provisions Act, 20 U.S.C. § 1232, Title IX regulations could not become effective until Congress had had forty-five days to review the regulations and to reject them. Although the statute was later amended to provide that failure to disapprove regulations does not constitute a finding of consistency with the underlying legislation, *see* Pub. L. 93-380, 88 Stat. 567, codified at 20 U.S.C. § 1232(d)(1), the Title IX regulations were finalized before the law was so amended.

[14] In the House, Representatives Martin and O'Hara introduced four resolutions disapproving the regulations, which were referred to the Committee on Education and Labor. *See* 121 Cong. Rec. 19209, 21687 (1975). In the Senate, resolutions of disapproval were introduced by Senator Helms, *see* S. Con. Res. 46, 94th Cong.,

The Subcommittee on Postsecondary Education held six days of hearings on the regulations at which then-Secretary Weinberger stated:

> Our view was that student assistance, assistance which the Government furnishes, that goes directly or indirectly to an institution is Government aid within the meaning of Title IX. If it is not, there is an easy remedy. Simply tell us it is not. We believe it is and base our assumption on that.

*Sex Discrimination Regulations: Hearings Before the Subcommittee on Postsecondary Education of the House Committee on Education and Labor*, 94th Cong., 1st Sess. 484 (1975).[15] The Subcommittee on Equal Opportunities also held a one-day hearing specifically addressing this issue.[16] None of the resolutions of disapproval advanced

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1st Sess., 121 Cong. Rec. 17300-01 (1975), and Senator Laxalt, *see* S. Con. Res. 52, 94th Cong., 1st Sess., 121 Cong. Rec. 22940-41 (1975), aimed at excluding programs covered because of receipt of student assistance.

[15] *See also, e.g., id.* at 117-21 (statement of representatives of National Collegiate Athetic Association); *id.* at 153 (statement of Rep. Chisholm); *id.* at 165-66 (statement of Cong. Mink); *id.* at 199 (statement of Rep. McKinney). *See also id.* at 169-71, 173-75, 178, 180-84 (statement of Sen. Bayh). Although Grove City asserts that in this testimony Senator Bayh stated that he did not believe that student financial aid was federal financial assistance under Title IX (Brief at 25), no such clear-cut statement was made. *See Sex Discrimination Regulations Hearings, supra*, at 182. Moreover, Senator Bayh repeatedly made clear elsewhere in his testimony that indirect financial assistance would bring all of a school's programs and activities under the statute. *See id.* at 169-71, 173-75, 178. Finally, as Grove City itself acknowledges (Brief at 25 n.23), Senator Bayh later, in both speaking and voting against an amendment that would have exempted student assistance from the definition of federal financial assistance under Title IX, took the position that such assistance was always intended to be covered by the statute. *See, e.g.*, 122 Cong. Rec. 28144-45 (1976), 117 Cong. Rec. 30408 (1971).

[16] *Hearing on House Concurrent Resolution 330 Before the Subcommittee on Equal Opportunities of the House Committee on Education and Labor*, 94th Cong., 1st Sess. (1975). During the testimony of the HEW witnesses, there was discussion of the implica-

in the House or Senate passed, and consequently the HEW regulations, including Section 86.2(g)(1)(ii), defining federal financial assistance to include financial aid to students, went into effect in July, 1975.[17]

Later efforts to limit the definition of federal financial assistance were also unsuccessful. In 1976, Senator McClure introduced an amendment to ensure that "when it is only the indirect effects of Federal moneys flowing in by way of student assistance the institution should not be subjected to Federal control . . . ." 122 Cong. Rec. 28145 (1976). The amendment was defeated, *id.* at 28147.

In 1981, Senator Hatch introduced an amendment that the only student financial aid constituting federal financial assistance would be that which the institution administers and has discretion over regarding the selection of student recipients, and that Title IX's coverage is limited to programs or activities "directly" receiving federal financial assistance. *See* S. 1361, 97th Cong., 1st Sess., 127 Cong. Rec. 6125 (daily ed. June 11, 1981). In introducing the amendment, Senator Hatch stated that it was intended to "dispose of the issues in the Grove City College versus Harris case, currently in litigation . . . ." 127 Cong. Rec. 6124.[18]

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tions for Title IX of *Bob Jones University v. Johnson*, 396 F. Supp. 597 (D.S.C. 1974), *aff'd*, 529 F.2d 514 (4th Cir. 1975), on veterans' benefits covering Bob Jones under Title VI. *See Hearing on House Concurrent Resolution No. 330, supra*, at 37. The Women's Equity Action League also submitted a statement on student aid. *See id.* at 51-54. At the conclusion of the hearing, the Subcommittee voted to recommend against passage of the resolution. *North Haven Board of Education v. Bell*, 456 U.S. at 533.

[17] This Court noted in *North Haven* that "the relatively insubstantial interest given the resolutions of disapproval that were introduced seems particularly significant since Congress has proceeded to amend § 901 when it has disagreed with HEW's interpretation of the statute," citing the addition of §§ 901(a)(6) and 901(a)(7)-(9) to the statute. 456 U.S. at 534 & n.25.

[18] Attachment A, a letter dated May 3, 1982 from Senator Hatch to a constituent, demonstrates that Senator Hatch determined that such a weakening amendment to Title IX was unwise.

In short, both the contemporaneous and postenactment legislative history of Title IX confirm that Congress intended to include financial aid to students within the federal financial assistance that subjects a school to Title IX.

**2. Program or Activity.**

The legislative history also confirms the companion principle that student financial assistance which flows throughout a school because it is used to pay tuition and fees brings all of that school's programs and activities within Title IX.

Congress determined in Title IX to "guarantee that women . . . enjoy the educational opportunity every American deserves." 117 Cong. Rec. 30155 (1971). The broad scope of that protection was underscored by Senator Bayh when he introduced Title IX. In his statement he said:

> . . . I believe a strong and comprehensive measure is needed to provide women with solid legal protection from the persistent, pernicious discrimination which is serving to perpetuate second-class citizenship for American women.

118 Cong. Rec. 3935 (1972).

Clearly, a description of Title IX as a strong, comprehensive law providing solid legal protection against sex discrimination in education is at odds with an interpretation of "program or activity" requiring direct receipt of earmarked funds. Under Grove City's approach, this solid and comprehensive protection would be unavailable whenever a school received federal funds flowing throughout its programs. Moreover the position articulated by the Court in *Hillsdale College v. Dept. of Education, et al.*, 696 F.2d 418 (6th Cir. 1982), *petition for cert. filed*, 51 U.S.L.W. 3704 (Mar. 16, 1983) (No. 82-1538) that the funds are earmarked for financial aid and therefore only the distribution of financial aid is covered, flies in

the face of the broad-based purpose. Under this reading, large sums of federal funds could flow throughout the school,[19] supporting all of its programs and activities, yet all except the financial aid program would be free to discriminate with the use of those funds. Surely, Congress was not so cynical as to pass a law designed to combat sex discrimination in schools intending that it would have so little effect.

Moreover, by carving out exceptions to the statute, both at the time Title IX was passed and to address subsequent concerns about Title IX's scope, Congress made clear that when it wanted to exclude from the statute's coverage particular programs and activities of an institution, it would do so expressly. *See* 20 U.S.C. §§ 1681 (a)(1)-(9), 1686. Never did Congress rely upon, and indeed several times it rejected, the argument that a school's particular programs or activities would be covered by Title IX only if they received federal funds directly.

For example, in 1974, after HEW had issued proposed regulations under Title IX but before the regulations went into effect, Congress amended Title IX to exempt the membership practices of certain social fraternities and sororities and youth service organizations. Pub. L. 93-568, § 3(a), 88 Stat. 1862 (1974), codified at 20 U.S.C. § 1681(a)(6). In introducing the amendment, Senator Bayh explained that unless it were enacted the statute would clearly apply to such organizations because they receive "indirect financial assistance" from institutions receiving federal funding or "direct Federal funds for various educational programs." 120 Cong. Rec. 39992 (1974). Moreover, in the debate on the amendment in the House, the discussion focused on whether, by approv-

[19] The federal student aid funds constitute substantial amounts of money. Hundreds of thousands of students and billions of federal dollars are at issue. *See* Knapp Testimony *supra* at 605-6, 608-9. Schools are not receiving only one dollar of this federal aid; rather, even small schools receive thousands of dollars of such assistance annually.

ing the amendment, Congress would be giving approval to the "institutional approach" which the Department of Health, Education, and Welfare had taken in its proposed regulations on Title IX:

> If we adopt the amendment . . . it is going to be hard ever coming back to HEW and saying, "What you are doing is wrong". . . .
>
> What the language does in this section . . . is to condone, in my judgment, the institutional approval [sic] which HEW is now attempting to do. They are saying we will regulate and even cut off Federal assistance to the whole of the institution, not just to a program or activity.

*Id.* at 41390 (remarks of Rep. Steiger). *See* also *id.* at 41393 (remarks of Rep. Quie). Despite this admonition, the amendment exempting social fraternities and sororities and youth service organizations was adopted. *See id.*

Later efforts to limit the coverage of Title IX to programs and activities directly receiving federal funds were also unsuccessful. One such effort was an amendment introduced by Senator Helms. *See* S. 2146, 94th Cong., 1st Sess. (1975), 121 Cong. Rec. 23845-47 (1975). He explained: "[t]he bill provides that Title IX shall apply only to education programs and activities which directly receive Federal financial assistance . . . ." 121 Cong. Rec. 23846 (1975). No action was taken on Senator Helms' bill. Another effort was the amendment recently proposed by Senator Hatch, containing similar language, which also was never acted upon. *See* discussion *supra* p. 13.

Finally, Congress' consistent position that intercollegiate athletics is covered under Title IX is particularly instructive on the issue of direct receipt of federal funds. Throughout the debates on Title IX coverage of intercollegiate athletic programs, Congress was fully aware that such programs were covered even though they only indirectly received federal financial aid.

In 1974, Senator Tower introduced an amendment initially drafted to exclude all intercollegiate athletics but ultimately worded to exclude "revenue producing" intercollegiate athletic activities from Title IX. *See* S. 1343, 93d Cong., 2 Sess., 120 Cong. Rec. 15322 (1974). Instead, Congress adopted an amendment offered by Senator Javits requiring HEW to prepare and publish proposed regulations which included reasonable provisions on intercollegiate athletics. *See* Pub.L. 93-380, Title VII, § 844, 88 Stat. 612 (1974).

HEW thereafter included within its Title IX regulations a prohibition against sex discrimination in athletics at all levels. *See* 40 Fed. Reg. 24128 (1975). At the time these regulations were reviewed by Congress, not only then-Secretary Weinberger but a majority of the witnesses who testified addressed the coverage of athletic programs under Title IX. *See Sex Discrimination Regulations: Hearings, supra passim.* Many of these witnesses presented the view taken by Grove City that direct receipt of federal funds is a prerequisite to regulatory coverage under Title IX and therefore athletic programs were not covered. *See id.* Congress rejected this position and allowed the regulations to go into effect.[20]

On July 15, 1975, after the HEW regulations were permitted to go into effect, Senator Tower reintroduced his amendment of the previous year. *See* 121 Cong. Rec. 22777 (1975). It never passed. Finally, on August 27,

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[20] As the district court in *Haffer v. Temple University*, 524 F. Supp. 531 (E.D. Pa. 1981), *aff'd*, 688 F.2d 14 (3d Cir. 1982), pointed out, Congress could not have been unaware at the time of the intensity of the debate over coverage of indirectly funded athletic programs. Twelve members of Congress testified at the subcommittee hearings and "Title IX coverage of intercollegiate athletic programs was even the subject of newspaper comic strips. . . ." *Id.* at 536. Moreover, two of the resolutions of disapproval were expressly directed at the athletics regulations. *See* 121 Cong. Rec. 19209 (1975) (Rep. Martin); *id.* at 22940-41 (Sen. Laxalt).

1976, the Senate defeated another amendment to Title IX similar to the Tower Amendment, designed to exclude intercollegiate athletics from coverage. See 122 Cong. Rec. 28136, 28147 (1976).

In sum, a review of the legislative history of Title IX shows that Congress consistently rejected the identical arguments made by Grove City in this case that only federal financial assistance that is "directly" received by a program or activity will bring that program or activity under Title IX—first when Title IX was passed in 1972, again when the statute was amended in 1974 to exclude certain programs and activities, again when the HEW regulations were permitted to go into effect, again when the Helms, McClure, and Tower amendments were not passed, and, most recently, when the Hatch amendment was not passed. Congress has demonstrated repeatedly its intention that, given the nature of federal funding to schools in this country, and in particular student aid which flows throughout the school, those schools would be covered by Title IX in their entirety. That only Grove City's student aid program need comply with Title IX, and that it could be free to discriminate in all of its other programs and activities, including its academic departments and its intercollegiate athletic program, flies in the face of Congress' clear intent in passing and continuously reaffirming Title IX's routine coverage of those parts of schools.

## II. TITLE VI, THE MODEL UPON WHICH TITLE IX WAS BASED, DEMONSTRATES THAT FEDERAL FINANCIAL ASSISTANCE TO STUDENTS AT GROVE CITY COLLEGE SUBJECTS THE COLLEGE AND ALL OF ITS PROGRAMS AND ACTIVITIES TO TITLE IX.

Title IX was expressly modeled after Title VI to provide the same protection against sex discrimination in education.[21] In 1972, when Title IX was enacted, Title

[21] *North Haven Bd. of Educ. v. Bell*, 456 U.S. at 549. From the earliest discussion of Title IX on the floor of the House and Senate,

VI's prohibition against discrimination had already been interpreted as far-reaching in its scope, to apply to both direct and indirect receipt of federal financial assistance. *See, e.g., Bossier Parish School Board v. Lemmon*, 370 F.2d 847 (5th Cir.), *cert. denied*, 388 U.S. 911 (1967); *United States v. Jefferson County Board of Education*, 372 F.2d 836 (5th Cir. 1966), *cert. denied sub nom. Caddo Parish Board of Education v. United States*, 389 U.S. 840 (1967). In *Bossier Parish*, a school board that accepted general, unrestricted funding in the form of Impact Aid, 20 U.S.C. §§ 237-41, "brought its *school system* within the class of programs subject to the section 601 prohibition against discrimination." 370 F.2d at 850 (emphasis supplied). Similarly, in *Jefferson County*, Title VI was held to apply to "services, facilities, activities, and programs that may be conducted or sponsored by, or affiliated with, the school in which a student is enrolled." 370 F.2d at 891.[22] Nowhere in these inter-

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members acknowledged that Title IX was modeled on Title VI and was intended to draw on the body of law established under Title VI. *See* 117 Cong. Rec. 30156, 30408 (1971); 118 Cong. Rec. 3937, 39256, 5807 (1972).

Not only prior to passage of Title IX were there several statements by members of Congress that the statutory coverage should be interpreted in accordance with precedents under Title VI, but subsequent attempts to modify Title IX by restricting the meaning of "program or activity" and "federal financial assistance," including in ways urged by Grove City in this case, were rejected in part because they would have made it impossible to reconcile the language of Title IX with the precedents set under Title VI. *See, e.g.*, 122 Cong. Rec. 28145 (1976).

[22] *See also United States v. Texas*, 321 F. Supp. 1043 (E.D. Tex. 1970), *modified*, 447 F.2d 441 (5th Cir. 1971), (desegregation of nine school districts ordered under Title VI); *United States v. Tatum Indep. School Dist.*, 306 F. Supp. 285 (E.D. Tex. 1969) (United States granted injunction against school district for violation of Title VI in failure to implement desegregation plan); *Hicks v. Weaver*, 302 F. Supp. 619 (D. La. 1969) (U.S. Department of Housing and Urban Development enjoined from making further payments of federal funds to Housing Authority of Bogalusa until decision on merits of whether location of public housing

pretations is there a suggestion that federal financial assistance in the form of student financial aid would not bring a school within Title VI or that Title VI is otherwise limited to particular programs or activities that are "directly" funded by the federal government.[23] As this Court has recognized, moveover, Congress was well aware of these interpretations of Title VI. "[B]ecause of their repeated references to Title VI. . . we are especially justified in presuming both that those representatives were aware of the prior interpretation of Title VI and that that interpretation reflects their intent with respect to Title IX." *Cannon v. University of Chicago*, 441 U.S. 677, 697-98 (1979).

Although ". . . the relevant inquiry is not whether Congress correctly perceived the then state of the law, but rather what its perception of the state of the law was," *id.* at 711, *quoting Brown v. GSA*, 425 U.S. 820 (1976),[24] the legislative history of Title VI confirms that Congress in 1972 correctly perceived that student financial aid would bring all of a school's programs and activi-

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projects in racially segregated neighborhoods throughout the city violated Title VI).

In addition to these reported cases, between 1965 and 1971 HEW instituted approximately 600 administrative enforcement proceedings under Title VI against school districts, and terminated all federal assistance to districts in 45-50 cases. *See* Affidavit of Leon Panetta, *Adams v. Richardson*, 356 F. Supp. 92 (D.D.C. 1973), *modified in part and aff'd in part en banc*, 480 F.2d 1159 (D.C. Cir. 1973). Congress was clearly aware of this activity, both because Title VI requires that Congress be given notice of proposed terminations of funds, *see* 42 U.S.C. § 2000d-1 and because of several attempts to amend Title VI in the mid-1960's, that were triggered by its use by HEW. *See* G. Orfield, *The Reconstruction of Southern Education: The Schools and the 1964 Civil Rights Act*, 264-328 (1969).

[23] Similarly, long-standing contemporaneous agency regulations have consistently interpreted Title VI as far-reaching in its scope, without limitation to programs or activities that are "directly" funded with federal financial assistance. *See* 45 C.F.R. § 293 *et seq.*

[24] *See also North Haven Bd. of Educ. v. Bell*, 456 U.S. at 529.

ties under Title VI. For example, at the hearings on Title VI, then-Secretary of the Department of Health, Education, and Welfare Celebrezze provided a list of HEW-funded programs that would bring an institution within its scope. The list specifically included the kind of assistance at issue in this case, "loans to college students," and federally financed fellowships. *Civil Rights Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary*, 88th Cong. 1st Sess., Pt. II at 1537-38 (1963). *See also id.* at 1541-42.[25] Indeed, those who opposed Title VI's passage employed as one of their arguments the fact that student educational loans and grants would constitute federal financial assistance under the statute. *See, e.g.*, H.R. Rep. No. 914, 88th Cong., 2d Sess. (1964), *reprinted in* 1964 U.S. Code Cong. & Ad. News 2391, 2462, 2471.

Grove City's argument (Brief at 29-30) that the change in language from the original version of Title VI demonstrates that Title VI applies only to programs or activities that directly receive federal financial assistance is similarly misplaced. The elimination from Title VI of the entire phrase "direct and indirect financial assistance," H.R. 7152, 88th Cong., 1st Sess. (1963); S. 1731, 88th Cong., 1st Sess. (1963), and the substitution of the phrase "any program or activity receiving federal financial assistance" was calculated to establish that coverage of a program by Title VI would not turn on whether federal funds are received *either* directly or indirectly. Not only did Congress not delete just the word "indirect," but references to indirectly funded programs appear in the

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[25] The statements of then-Deputy Attorney General Katzenbach and some members of Congress that direct payments to individuals are not federal financial assistance, cited by Grove City (Brief at 30-32), do not contradict this legislative history. The point that these statements were making is that direct, *unrestricted* payments from the government to an individual, such as Social Security, would not be payments to a program or activity under Title VI. *See Bob Jones University v. Johnson*, 396 F. Supp. at 602 n.16.

debates after the wording was changed. *See, e.g.*, 110 Cong. Rec. 7058 (1964).

In short, Congress in enacting Title IX was aware that Title VI had been interpreted and implemented to apply to programs and activities receiving federal financial assistance without regard to whether that assistance was received directly or indirectly, and that financial aid to students would bring a school under Title VI. Congress' awareness of these interpretations confirms that it intended that federal financial assistance to students bring the institution that those students attend, and all of its programs and activities directly or indirectly receiving those funds, under Title IX.[26]

## III. THE CASE LAW CONFIRMS THAT FEDERAL FINANCIAL ASSISTANCE TO STUDENTS AT GROVE CITY COLLEGE SUBJECTS THE COLLEGE IN ITS ENTIRETY TO TITLE IX.

Decisions of this Court as well as the lower federal courts under Title IX, Title VI, Section 504 and the Fourteenth Amendment confirm that federal financial assistance to students flowing throughout the school brings all of that school's programs and activities within Title IX.

All of the courts that have considered the question have held that federal student aid is federal financial assistance received by a school for purposes of Title IX, Title VI, or Section 504. *See Hillsdale College v. Department of Health, Education, & Welfare, supra*, (Title IX);

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[26] Interpretations of Title VI since 1972 similarly support the breadth of that statute, and by analogy Title IX's reach. *See Lau v. Nichols*, 414 U.S. 563 (1974); *Serna v. Portales Municipal Schools*, 499 F.2d 1147 (10th Cir. 1974); *Yakin v. University of Illinois*, 508 F. Supp. 848 (N.D. Ill 1981); *Flanagan v. President & Directors of Georgetown College*, 417 F. Supp. 377 (D.D.C. 1976); *Bob Jones Univ. v. Johnson, supra. Bob Jones*, in which the court squarely decided that federal financial assistance to students would subject the university to liability under Title VI, is cited approvingly in the legislative history of the 1976 amendments to Title IX. *See* 122 Cong. Rec. 28145 (1976).

*Haffer v. Temple University*, *supra* (Title IX); *Grove City College v. Bell*, *supra* (Title IX); *Bob Jones University v. Johnson*, *supra* (Title VI). *See also United States v. Baylor University Medical Center*, No. CA-3-82-0453-D (N.D. Tex. June 7, 1983) (Section 504). The principle enunciated in these cases, which are based on the language and legislative history of the statutes involved, flows from a tradition of case law in this Court under the Fourteenth Amendment, exemplified by *Norwood v. Harrison*, 413 U.S. 455, 464 (1973) (the loan of textbooks to students attending racially segregated schools was "a form of financial assistance inuring to the benefit of the private schools themselves," even though no state assistance was provided directly to the schools).[27]

Cases under Title IX, Title VI, and Section 504 have also held that direct or indirect federal financial assistance covers specific education programs or activities within a school. In *Haffer v. Temple*, *supra*, the Court held that the intercollegiate athletic program was covered by Title IX, although it did not receive earmarked federal funds. In *Wort v. Vierling*, No. 82-3169 (C.D. Ill. May 28, 1982), the court held that discrimination in the National Honor Society is subject to Title IX even in the absence of direct federal financial assistance to the society.[28] In *Yakin v. University of Illinois*, *supra*, the court held that the plaintiff's complaint of discrimination in his termination from a Ph.D. program could not be dismissed on the grounds that neither the program nor

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[27] *See also Committee for Public Education v. Nyquist*, 413 U.S. 756, 783 (1973) (state tuition reimbursement to parents of children attending private schools "unmistakably . . . provide[s] desired financial support for [such] institutions"); *Griffin v. State Board of Education*, 239 F. Supp. 560, 563 (E.D. Va. 1965), *modified on other grounds*, 296 F. Supp. 1178 (E.D. Va. 1969) ("Nor do we think weight is to be accorded the fact that the money is paid to the pupil or parent and not to the school, for the pupil or parent is a mere channel").

[28] *See also Piascik v. Cleveland Museum of Art*, 426 F. Supp. 779, 781 n.1 (N.D. Ohio 1976).

the plaintiff himself "receive[d] federal financial assistance directly," so long as such assistance was received by the university generally. 508 F. Supp. at 850. Similarly, in *Flanagan v. President & Directors of Georgetown College, supra*, the court held that federal financial assistance for the construction of a building subjected an education program that used the building to Title VI for discrimination in its distribution of financial aid, over the protest of the school that the federal assistance was unrelated to the financial aid.[29]

In *Board of Public Instruction of Taylor County, Florida v. Finch*, 414 F.2d 1068 (5th Cir. 1969), the court remanded to HEW for specific agency findings whether three federal grant programs (for supplementary education centers, adult education, and the education of children from low-income families) were affected by discrimination in the school system. The court stated that "there will . . . be cases from time to time where a particular program, within a state, within a county, within a district, even within a school (in short, within a 'political entity or part thereof'), is effectively insul..ed from

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[29] *See also NAACP v. Medical Center, Inc.*, 599 F.2d 1247 (3d Cir. 1979) (Title VI and Section 504 found to create a private right of action to challenge the relocation of major components of the Wilmington Medical Center from their inner-city location to an outlying suburban location, without discussion of whether those components received federal financial assistance directly earmarked for their use); *Uzzell v. Friday*, 547 F.2d 801, 802 (4th Cir. 1977) (regulations of University of North Carolina requiring that a certain number of minority group members be appointed to the student government invalidated under Title VI, without discussion of whether the student government received fedral funds beyond the "federal financial assistance in the form of grants and contracts" provided to the university generally.) *Cf. Larry P. v. Riles*, 495 F. Supp. 926, 964-66 (N.D. Cal. 1979) (invalidating under Title VI placement and testing procedures of the California State Board of Education and the San Francisco United School District, without discussion of whether the testing or placement process received federal funds beyond the "substantial federal assistance" provided to the school system generally).

otherwise unlawful activities." *Id.* at 1078. But on the larger view, the court said:

> [i]f the funds provided by the grant are administered in a discriminatory manner, or if they support a program which is infected by a discriminatory environment, then termination of such funds is proper.

*Id.* Moreover, the Third Circuit in this case noted that *Finch* did not involve "across-the-board assistance for general educational purposes nor indirect federal financial assistance," 687 F.2d at 698 n.23, so that it was not necessary to go beyond the contours of the specific grants in issue in that case to determine the contours of the programs affected. In this case, general federal financial assistance does flow throughout the school, and so could be used to support discrimination in all of the school's programs or activities.[30]

These cases are consistent with cases on the scope of Title VI decided before Title IX was enacted. *See, e.g., Bossier Parrish School Board v. Lemmon, supra,* and *United States v. Jefferson Country Board of Education, supra.* Moreover, the reasoning of these cases has been confirmed by this Court in *Lau v. Nichols, supra,* in which a school district that received federal funds was prohibited under Title VI from discriminating in the admission or treatment of its students in any aspect of the educational process and not simply in those programs or activities "directly" funded by the federal government.[31]

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[30] *See also Iron Arrow Honor Society v. Heckler,* 702 F.2d 549 (former 5th Cir. 1983), holding that discrimination in an honor society infected the entire university, thereby reaching, by definition, federal funding wherever and however it was received.

[31] *See also Serna v. Portales Municipal Schools, supra,* which follows the approach taken by *Lau.* The *Serna* court viewed the *Lau* decision as interpreting Title VI to require assurance that "students of a particular national origin are not denied the opportunity to obtain the education generally obtained by other students

Nor have cases on the scope of Section 504 limited coverage to programs or activities for which federal assistance was specifically earmarked or expendended. In *United States v. Baylor University Medical Center*, *supra*, the court held that Medicaid and Medicare payments for health services rendered to eligible patients are federal financial assistance to a hospital that brings that hospital under Section 504. In *Garrity v. Gallen*, 522 F. Supp. 171, 212-13 (D.N.H. 1981), the court rejected the defendants' arguments that Section 504 applies "only [to] those specific activities or programs within Laconia State School itself which plaintiffs have proven are sustained by federal funds," noting the "intolerable burden" that would be imposed by an attempt to "identify precisely which federal funds flow to which programs and activities within [the] school." In *Poole v. South Plainfield Board of Education*, 490 F. Supp. 948, 951 (D.N.J. 1980), the court held that "§ 504 is applicable to the interscholastic athletic activities of a school system receiving federal funding even if none of the federal funds are specifically spent on interscholastic athletics." Similarly, in *Wright v. Columbia University*, 520 F. Supp. 789 (E.D. Pa. 1981) the court rejected the university's argument that Section 504 did not cover the athletic program because it received no direct federal funding.[32] Acceptance of such an argument, the court stated, *id.* at 792, would permit federally-funded institutions

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*in the system.*" 499 F.2d at 1153 (emphasis supplied). As a result, the *Serna* court ordered wide-ranging changes in the Portales school district affecting its entire educational program.

[32] *See also Wolff v. South Colonie Central School Dist.*, 534 F. Supp. 758, 761 (N.D.N.Y. 1982). Moreover, a number of cases that have not dealt expressly with the "federal financial assistance" or "program or activity" language of Section 504 have nonetheless treated the statute as having a broad scope. *See Southeastern Community College v. Davis*, 442 U.S. 397 (1979); *Caminisch v. University of Texas*, 616 F.d 127, 129 (5th Cir. 1980), *vacated as moot and remanded for trial*, 451 U.S. 390 (1981); *New York State Ass'n for Retarded Children v. Carey*, 612 F.2d 644 (2d Cir. 1979); *Kamp-*

to dissect themselves, at whim, into discrete entities, to allocate federal dollars into programs which cannot discriminate against handicapped persons, and to free privately obtained funds from those programs and instead to channel such money into programs purportedly immune from Section 504 strictures.

In summary, a wealth of case law under Title IX, Title VI, Section 504, and the Fourteenth Amendment confirms the Third Circuit's conclusion that federal financial assistance to students brings all of a school's programs and activities within Title IX.[33] In introducing Title IX, Senator Bayh explained that he doubted "whether even one institution of higher education today, private or public, is not receiving some Federal assistance". 117 Cong. Rec. 30403 (1971). If student financial aid is excluded, hundreds of such schools would no longer be covered, and the scope and effectiveness of Title IX, Title VI and Section 504 would be severely curtailed.

In addition, if this Court accepts Grove City's position that a program is covered under Title IX only if it re-

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*meier v. Nyquist*, 553 F.2d 296, 298 n.2 (2d Cir. 1977), *Barnes v. Converse College*, 436 F. Supp. 635, 636-37 (D.S.C. 1977).

[33] The few cases adopting a narrower reading are unpersuasive and provide weak authority for their position. *Hillsdale College v. Department of Health, Education, and Welfare, supra*, was decided by a divided panel with one judge in the majority having died before the judgment was entered, thereby raising a question about the validity of the decision. The other cases were either decided prior to this Court's decision in *North Haven*, not appealed, or since reversed or affirmed on other grounds. *See Rice v. President & Fellows of Harvard College*, 663 F.2d 336 (1st Cir. 1981), *cert. denied*, 102 S. Ct. 1976 (1982); *University of Richmond v. Bell*, 543 F. Supp. 321 (E.D. Va. 1982); *Bennett v. West Texas State Univ.*, 525 F. Supp. 77 (N.D. Tex. 1981), *rev'd*, No. 81-1398 (5th Cir. Jan. 31, 1983), *modified on rehearing* (Feb. 23, 1983), *pet. for cert. filed*, 51 U.S.L.W. 3775 (Apr. 6, 1983) (No. 82-1683); *Othen v. Ann Arbor School Bd.*, 507 F. Supp. 1376 (E.D. Mich. 1981), *aff'd on other grounds*, 699 F.2d 309 (6th Cir. 1983); *Stewart v. New York University*, 430 F. Supp. 1305 (S.D. N.Y. 1976).

ceives money under a federal statute whose funds are specifically earmarked for use in that program, or the *Hillsdale* position that only financial aid, or federal financial aid, is covered, the very purposes of Title IX, Title VI and Section 504 would be defeated. The history department, the athletics program, or the student union, for example, could be conducted in a sex-discriminatory manner with impunity, although all these activities receive and benefit from federal funds, so long as the funds are not specifically earmarked for those uses.

Congress surely did not intend in passing these laws to tolerate a situation in which a student could go from one course to another, from the cafeteria to the study hall, from physical education to French class, and be subjected to discrimination in some programs but not others, depending upon whether the program "directly" receives federal funds.

The student aid Grove City receives flows throughout the College through payment of tuition and costs. Although in the form of student aid, its reach is far broader than the financial aid suggested by the *Hillsdale* court. Grove City may use the tuition payments to support any and all of its activities. This student aid, as recognized by Congress in 1971 and 1972 when it was created, and as underscored by public statements of schools and colleges today, is a vital source of revenue for the schools. Whatever the coverage of an educational institution might be where limited grants or contracts are at issue,[34] the type of funding at issue here, reaching all parts of the school, clearly brings all of Grove City within the confines of Title IX.

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[34] In the case of such contracts and grants, the totality of circumstances, including overhead factors, permissible uses of the funds, and the like, would be relevant to determine coverage, and whether in fact a "financial '[C]hinese wall' " exists. *Grove City College v. Bell*, *supra*, at 701 n.28.

## CONCLUSION

The judgment of the Third Circuit should be affirmed.

Respectfully submitted,

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August 8, 1983

[redacted]

United States Senate

[redacted]

May 3, 1982

Ms. Barbara Hales
719 East 2730 North
Provo, Utah 84604

Dear Ms. Hale:

Since introducing my amendment on Title IX, I have had the time to become more familiar with the problems that Title IX hopes to resolve, and the improvements it has made in opening up opportunities for women in education.

Much of this has been as a result of your personal involvement. You have helped me become more acutely aware of the gains across a wide front which have been made for women in Utah because of Title IX. As you know, I have always supported all efforts which would improve the rights and conditions for women.

My amendment for Title IX (S. 1361) was originally introduced because of my deep conviction that local governments are best able to meet the needs of most citizens. In addition, some private colleges, which refuse to take federal funds directly, appeared to have been improperly harassed by federal bureaucrats. While I continue to feel that Title IX, as enacted, is not perfect and can be improved, since reviewing the progress made because of Title IX and the rational way it has been administered in Utah in the past few years, I am withdrawing my amendment. I will continue to monitor the situation carefully and consider other improvements if they become necessary.

I will also support all reasonable and worthwhile efforts which will improve conditions for women. In this regard, I will appreciate your continued suggestions and support in achieving this goal.

Warmest personal regards.

Orrin G. Hatch
United States Senator

OGH:fr

For Any Response Please Cite File No: 4-001PM.20

Attachment A